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8 **UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

9 AVI YARON, Individually and On Behalf
10 of All Others Similarly Situated,

11 Plaintiff,

12 v.

13 INTERSECT ENT, INC., LISA D.
EARNHARDT, JERYL L. HILLEMANN,
14 and ROBERT H. BINNEY, JR.,

15 Defendants.

Case No.: 4:19-cv-02647-JSW

**JOINT STIPULATION AND ~~PROPOSED~~
ORDER TO VACATE DATES AND SET
DATE TO FILE MOTION FOR
PRELIMINARY APPROVAL OF
SETTLEMENT**

The Hon. Jeffrey S. White

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1 Lead Plaintiff Avi Yaron (“Plaintiff”) and Defendants Intersect ENT, Inc. (“Intersect”),
2 Lisa D. Earnhardt, Jeryl L. Hilleman, and Robert H. Binney, Jr. (“Defendants” and together with
3 Plaintiff, the “Parties”) hereby enter into the following stipulation and jointly request that the
4 Court vacate the dates currently scheduled in the action and set a date for Plaintiff to file his
5 motion for preliminary approval of the settlement.

6 WHEREAS, this action was commenced on May 15, 2019 (ECF No. 1);

7 WHEREAS, by order dated June 19, 2020, the Court dismissed Plaintiff’s Consolidated
8 Amended Complaint with leave to amend (ECF No. 33);

9 WHEREAS, on July 29, 2020, Plaintiff filed his Second Amended Complaint (“SAC”)
10 (ECF No. 38);

11 WHEREAS, on September 18, 2020, Defendants filed their Motion to Dismiss the SAC
12 (ECF No. 39);

13 WHEREAS, on October 23, 2020, Plaintiff filed his opposition to Defendants’ Motion to
14 Dismiss the SAC (ECF No. 47);

15 WHEREAS, on October 29, 2020, the Parties conducted a mediation with Jed D. Melnick
16 (JAMS). The Parties did not resolve the case on that date;

17 WHEREAS, on November 20, 2020, Defendants filed their reply to Plaintiff’s opposition
18 to the Motion to Dismiss the SAC (ECF No. 48);

19 WHEREAS, by order dated January 22, 2021 (ECF No. 54), the Court granted Defendants’
20 Motion to Dismiss the SAC, finding the SAC failed to adequately state a claim. Thereafter, the
21 Parties re-engaged in settlement discussions with the assistance of Mr. Melnick;

22 WHEREAS, the Court’s dismissal of the SAC was without prejudice and allowed Plaintiff
23 until February 11, 2021 to file a further amended complaint or otherwise indicate that no such
24 amended complaint shall be filed;

25 WHEREAS, on February 5, 2021, the Court entered an order approving the Parties’
26 stipulation to continue Plaintiff’s deadline to file an amended complaint, or otherwise indicate that
27 no such amended complaint will be filed, from February 11, 2021 to March 4, 2021 (ECF No. 56);
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1 WHEREAS, on March 4, 2021, the Parties reached an agreement in principle to settle this
2 litigation in its entirety; and

3 WHEREAS, the Parties will endeavor to have all settlement papers finalized and be in a
4 position to submit them for preliminary approval within 60 days.

5 THEREFORE, IT IS STIPULATED AND AGREED between the undersigned Parties, by
6 and through their respective counsel and subject to the Court's approval, as follows:

7 1. In light of the agreement in principle reached by the Parties to settle this action, all
8 pending dates currently scheduled shall be vacated;

9 2. Plaintiff will submit his motion for preliminary approval of the proposed class
10 action settlement within 60 days of the Court's approval of this Stipulation, or will provide the
11 Court with an update at that time.

12 Dated: March 4, 2021

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Attorneys for Lead Plaintiff Avi Yaron

1 Dated: March 4, 2021

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11 *Attorneys for Defendants Intersect ENT, Inc., Lisa D.*
12 *Earnhardt, Jeryl L. Hilleman, and Robert H. Binney,*
13 *Jr.*

14 **PURSUANT TO STIPULATION IT IS SO ORDERED.**

15 DATED: March 5, 2021

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18 HONORABLE JEFFREY S. WHITE
19 UNITED STATES DISTRICT JUDGE
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